Supreme Court, U.S.
FILED
OCT 12 1955
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 462

AARON M. KOHN,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

EUGENE STANLEY,
Attorney for Petitioner,
819 Whitney Bldg.,
New Orleans, La.

Montgomery & Co., "The Brief Specialists", 430 Chartres St., N. O., La.

INDEX

	Page
PRAYER	1
OPINIONS BELOW	2
JURISDICTION	3
QUESTIONS PRESENTED FOR REVIEW	4
CONSTITUTIONAL PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	5
BASIS OF PETITIONER'S APPLICATION	7
FEDERAL QUESTIONS IN THE COURTS BELOW	8
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	14
APPENDIX "A"	15-17
Extract from minutes of Criminal District Court, Parish of Orleans, Louisiana, finding petitioner guilty of contempt of Court	15
Extract from minutes of same Court sentencing petitioner for contempt of Court	15
Copy of decree of Louisiana Supreme Court denying petitioner's application for writs of certiorari, etc.	16-17

TABLE OF CASES

	Page
State v. Rodrigues, 219 La. 217, 52 So. (2d) 756	10, 13
Re Battelle, 207 Cal. 227, 227 F. 725, 65 A. L. R. 1497	12
Joslyn v. People, 67 Cole 297, 184 P. 375, 7 A. L. R. 339	12
Ex Parte Creasy, 243 Mo. 579, 148 S. W. 914, 41 L. R. A. (N. S.) 478	12
Re Shull, 221 Mo. 623, 121 S. W. 10, 133 Am. St. Rep. 496	12, 13
Hoffman v. Hoffman, 26 S. D. 34, 127 N. W. 478, 30 L. R. A. (N. S.) 564	12
Fleming v. U. S., (1922, C. C. A., 9th), 279 Fed. 613 (Cert. denied), 67 L. Ed. 496, 43 S. Ct. 10, 260 U. S. 752	13, 14
Savin (petitioner), 131 U. S. 267, 9 Sup. Ct. 699, 33 L. Ed. 150	14
Brown v. U. S., 196 Fed. 351	14
St. Pierre v. U. S., 319 U. S. No. 41, 87 L. Ed. 1201	7

LAW ENCYCLOPEDIAS AND LEGAL REFERENCE WORKS

	Page
Corpus Juris Secundum, "Contempt", Vol. 17, pars. 2, 3, 4 and par. 5, p. 7	10
American Jurisprudence, Vol. 12 "Contempt", par. 78, p. 444	11
1954 Cumulative Supplement to Vol. 12, American Jurisprudence, page 53	11
Ann. Cas. 1913 A, 956 (dictum)	13
Anno: 154 A. L. R. 1229	13
154 A. L. R. 1234	13
154 A. L. R. 1236-1237	13

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment 14	4
United States Constitution, Amendment 6	4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. _____

AARON M. KOHN,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

Aaron M. Kohn, petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana, entered in the case of State of Louisiana vs. Aaron M. Kohn, on September 30, 1955, rejecting and denying the application of the said Aaron M. Kohn, petitioner, for writs of certiorari, mandamus and prohibition to review a judgment of Hon. Niels F. Hertz, Judge, Section "F", Criminal District Court for the Parish of Orleans, State of Louisiana, adjudging

and finding the said Aaron M. Kohn guilty of contempt of Court and sentencing the said Aaron M. Kohn to pay a fine of $100.00 and to serve ten days in the Parish Prison of the City of New Orleans and, in default of the payment of the said fine, to serve ten days additional in the said Parish Prison of the City of New Orleans, the said judgment of the Supreme Court of the State of Louisiana rejecting and denying the application of the said Aaron M. Kohn for the above mentioned writs being a final judgment, no application for a rehearing being permitted under the rules of the said Supreme Court of Louisiana when the Court has refused to grant a writ of certiorari or review, or an alternative writ of mandamus or prohibition or rule nisi. (Sec. 5, Rule XII, Rules Louisiana Supreme Court, Record, p. 78).

The said Supreme Court of Louisiana is the highest Court of the State of Louisiana and your petitioner, Aaron M. Kohn, has exhausted all legal remedies possible in the Courts of the State of Louisiana.

OPINIONS BELOW.

The opinions below have not been published in any official or unofficial report. The verbal opinion of the District Judge in the lower Court, as recorded in the minutes of the court, will be found on page 15 of Appendix A, page 22 of record. The opinion of the Supreme Court of Louisiana denying petitioner's application for certiorari will be found on pages 16-17 of Appendix A, page 70 of record.

JURISDICTION.

The jurisdiction of this Honorable Court is invoked under 28 USCA, Sec. 1257 (No. 3), which provides in part:

> "Final judgments or decrees rendered by the highest Court of a state in which a decision could be had may be reviewed by the Supreme Court as follows:
>
> "By writ of certiorari * * * where any right, privilege or immunity is specially set up or claimed under the Constitution * * * or statutes of * * * the United States."

Petitioner respectfully contends that he has been deprived of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States and makes the specific claim that the judgment and sentence rendered by the Trial Judge herein, finding petitioner guilty of contempt of Court and ordering petitioner to pay a fine of $100.00 and to serve ten days in the Parish jail and, in default of payment of the said fine, to serve ten days additional, is illegal, null and void on its face, because said judgment fails to contain a statement of facts upon which the decision is based and fails to state how and why your petitioner was guilty of contempt of Court and fails to show any act or conduct on the part of petitioner which tended to obstruct the administration of justice, or to bring the Court into disrepute or disrespect.

(See judgment complained of, page 15, Appendix "A", page 22 of record).

QUESTIONS PRESENTED FOR REVIEW.

The Supreme Court of Louisiana erred:

In refusing to issue the writs of certiorari, mandamus and prohibition prayed for and in failing to review the judgment and sentence complained of, and in failing to hold that the judgment and sentence complained of was a nullity on its face, because it failed to contain a statement of facts upon which the judgment was based and because it failed to show how and why petitioner was guilty of contempt of Court, and because it failed to show any act on the part of petitioner, or conduct on the part of petitioner, which tended to obstruct the administration of justice, or to bring the Court into disrepute or disrespect, and in failing to hold that, because of the above facts, the said judgment and sentence deprived petitioner of his liberty without due process of law.

CONSTITUTIONAL PROVISIONS INVOLVED.

The Constitutional provisions involved are the *Fourteenth Amendment* which, in part, provides:

> "Nor shall any State deprive any person of life, liberty or property without due process of law."
>
> *U. S. Constitution, Amendment XIV*

and the *Sixth Amendment* to the Constitution of the United States which provides, in part, that a person is entitled

> "to be informed of the nature and cause of the accusation."
>
> *U. S. Constitution, Amendment VI.*

STATEMENT OF THE CASE.

Heretofore, to-wit: on the trial of case No. 147,345 of the docket of the Criminal District Court for the Parish of Orleans, State of Louisiana, Section "F", Hon. Niels F. Hertz, Judge presiding, the said case being entitled State of Louisiana vs. Louis G. Hill and Clifford A. Reuther, charged with violating the Louisiana Revised Statutes, Sec. 14:26 (Criminal Conspiracy to Commit Public Bribery), your petitioner, Aaron M. Kohn, was called as a witness for and on behalf of the State of Louisiana in such case; that after being sworn as such witness, petitioner was interrogated by Hon. Leon D. Hubert, Jr., District Attorney for the Parish of Orleans; that the intent and purport of the examination of petitioner by the said District Attorney was for the purpose of having petitioner identify a certain document which the State of Louisiana, through the said District Attorney, intended to later offer in evidence on the trial of the said case, and petitioner did so identify the said document to the satisfaction of the said District Attorney, who then turned petitioner over as a witness to counsel for the defendant for cross-examination.

That during the course of this cross-examination of petitioner by one of the counsel for the defendant, petitioner was asked by the said attorney where he had first seen the said document and was then asked to disclose the source from which he had obtained the said document, and petitioner, informing the Court as to his reasons, respectfully declined to state where he had obtained the said document.

The Court, without assigning any reasons or stating any facts, held that counsel for the defendant was entitled to know where the document came from and found petitioner guilty of contempt of Court.

Later in the trial, the Court, still without assigning any reasons or stating any facts for its judgment, sentenced the petitioner to pay a fine of $100.00 and to serve ten days in the Parish jail of the City of New Orleans and, in default of the payment of the said fine, to serve ten days additional. (Appendix "A", No. 2, Record, p. 26).

From the said judgment and sentence petitioner gave notice to the Trial Judge of his intention to apply to the Honorable the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition, your petitioner not being allowed under the laws of the State of Louisiana the right of direct appeal from the said judgment.

Pending the action of the Louisiana Supreme Court on petitioner's application for writs, petitioner was released on bond.

On Friday, September 30, 1955 the Honorable the Supreme Court of Louisiana denied petitioner's application for writs of certiorari, mandamus and prohibition.

On Monday, October 3, 1955, petitioner, through counsel, presented to the Honorable the Supreme Court of Louisiana a petition for a stay of execution of the said judgment and mandate, rejecting and denying petitioner's application for remedial writs, which petition for stay of execution was denied and refused by the Supreme Court

of the State of Louisiana, and petitioner now presents this application for certiorari to this Honorable Court, as petitioner, on October 5, 1955, was granted a reprieve of seven days by the Governor of Louisiana in which to file this application, said reprieve to remain in force and effect during the pendency of this application before Your Honors, said reprieve making it unnecessary at this time for petitioner to request Your Honors to grant a stay of judgment herein.

Otherwise, had petitioner been compelled to serve the sentence imposed before this application could be considered by Your Honors, the questions presented herein would have become moot and your petitioner would have suffered the deprivation of the rights and privileges guaranteed him by the Fourteenth Amendment to the Constitution of the United States. (*St. Pierre v. U. S.*, 319 U. S., p. 41, 87 L. Ed. 1201).

BASIS OF PETITIONER'S APPLICATION.

The basis of petitioner's application is that since he has been summarily adjudged guilty of contempt of Court, the judgment of the Court finding him guilty of contempt, (see page 15 of Appendix), is a nullity on its face, since it fails to state specifically and in what manner petitioner was guilty of contempt of Court, it being petitioner's contention that in a proceeding to summarily punish him for contempt, it was necessary for the judgment to state all the facts and circumstances which constituted the contempt so that an Appellate Court, by a reading of said judgment, could determine whether or not the conduct complained of actually constituted contempt on the part of petitioner.

That petitioner was entitled to such a finding under the Fourteenth Amendment to the Constitution of the United States.

FEDERAL QUESTIONS INVOLVED IN THE COURTS BELOW.

The Federal question involved, to-wit: Deprivation of rights guaranteed petitioner under the Fourteenth Amendment to the Constitution was raised in the application for writ of certiorari, etc., filed by petitioner in the Supreme Court of Louisiana, in paragraph 11 of said application, found on page 7 of the Record, paragraph 11, in part, reading as follows:

> "Petitioner avers that the action of the Honorable Trial Judge, Hon. Niels F. Hertz, in prematurely adjudging your petitioner guilty of contempt of Court is illegal, null and void and in violation of the Constitution and laws of the State of Louisiana and the Constitution and laws of the United States of America, and more particularly Section 2 of Article One of the Constitution of the State of Louisiana and the Fourteenth Amendment to the Constitution of the United States of America, in that petitioner is being deprived of his liberty without due process of law."

REASONS FOR GRANTING THE WRIT.

It is clear that the Supreme Court of Louisiana has decided a Federal question:

a. By refusing to exercise its supervisory jurisdiction through the issuance of the writs of certiorari, etc., applied for, so as to review pe-

titioner's claim that he has been deprived of due process of law, under the Fourteenth Amendment, because the judgment of the lower court finding petitioner guilty of contempt of Court failed to state how and why petitioner was guilty of contempt of Court and failed to show any act, or conduct on the part of petitioner which tended to obstruct the administration of justice or to bring the court into disrepute or disrespect.

Certainly a monetary fine and sentence to a mandatory ten day imprisonment in the Parish (County) jail on a finding "Guilty of contempt"—without any statement or reasons on the part of the trial judge so as to permit the appellate court to determine whether or not petitioner was actually guilty of contempt of Court, is a deprivation of due process of law to which petitioner is entitled under the Fourteenth Amendment.

We respectfully submit that

AN ORDER OR JUDGMENT OF DIRECT CONTEMPT MUST CONTAIN A STATEMENT OF THE FACTS UPON WHICH THE DECISION IS BASED, and without such statement of facts showing that the conduct sought to be punished was of such character as tended to obstruct the administration of justice, or tended to bring the Court into disrepute or disrespect, such judgment finding a person guilty of contempt and imposing a penalty therefor is a nullity on its face and must be annulled and set aside.

In the case of *State v. Rodrigues*, (Mr. Justice Hawthorne) 219 La. 217, 52 So. (2d) 756, it was held:

> "* * * A criminal contempt is conduct that is directed against the dignity and authority of the Court, or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the Court into disrepute or disrespect." (17 *C. J. S.*, Contempt, No. 5, p. 7).
>
> "Contempt of court has been classified as either direct or constructive. Direct contempt is committed in the presence of the court; constructive contempt is committed out of the presence of the court." (17 *C. J. S.*, Contempt, Nos. 2, 3, 4).

Direct contempt may be proceeded against summarily without the need of rule or citation *(State v. Rodrigues, supra)*, but whether the contempt be direct or constructive, the conduct complained of must be such as tends to obstruct the administration of justice or tends to bring the court into disrepute or disrespect, **AND THE COURT MUST SO FIND AND DETAIL THE FACTS in its judgment finding the defendant guilty of contempt of court.**

> "In contempts committed in the immediate view and presence of the judge * * * —that is, direct contempt—where punishment is summarily inflicted, it is necessary for the judgment to recite the facts constituting the contempt. Where the contempts are not committed in the immediate view and presence of the Court—that is, constructive contempts—since in such cases affidavits must be presented setting forth the facts constituting the contempts, it is not necessary that the judgment

recite them. *(American Jurisprudence,* Vol. 12, Contempt, Par. 78, p. 444).

We quote from the 1954 Cumulative Supplement to Volume 12, *American Jurisprudence,* page 53, as follows:

"It has been held, in the overwhelming majority of jurisdictions, that an order or judgment of direct contempt must contain a statement of the facts upon which the decision is based, the purpose of this requirement being to enable the appellate court to determine, by an inspection of the record, whether the court had jurisdiction to punish it. *(9.5)* The reason for this general rule that detailed facts must be set out in a judgment or order for direct contempt is that the courts, while recognizing the summary nature of direct contempt proceedings, try to limit to the absolute minimum the dangers inherent in such type of legal proceedings. Even a right to review in such cases constitutes no guaranty against unjust or arbitrary judgment if the reviewing court is not afforded an opportunity to evaluate the facts upon which the decision has been reached. *(9.51)* Generally speaking, there are four main requirements of a valid decision for direct contempt of court:

(1) The decision must set out sufficient facts to show that the court had jurisdiction to punish for direct contempt; *(9.52)* (2) The decision must further show that the contempt was committed in the presence of the court—in other words, that it was a direct contempt of court; *(9.53)* (3) The decision must show that the contempt was committed

wilfully; *(9.54)* and (4) the actual facts upon which the court bases its final conclusion must be set out; it is not sufficient merely to state the conclusions of the court. *(9.55)* It may be stated as a general rule that declarations by the courts containing a mere finding of the ultimate facts, such as that the behavior of the contemner was menacing, *(9.56)* insolent, *(9.57)* insulting and contemptuous, *(9.58)* boisterous, *(9.59)* and so forth, will be held to constitute conclusions, and will not suffice to support an order or judgment of contempt, and that, instead, it is necessary for the court to state the acts committed by the contemner from which the ultimate conclusions are drawn. *(9.6)* In several jurisdictions it has been held that the mere statement in an order or judgment for direct contempt that the contemner refuses to answer a question though directed by the court to do so does not constitute a sufficient compliance with the general rule that the facts upon which the decision is based must be set forth, for the reason that it does not appear from such bare statement whether or not the questions were legal. *(9.61)*"

9.5. *Re Battelle*, 207 Cal. 227, 227 F. 725, 65 A. L. R. 1497;

Joslyn v. People, 67 Cole 297, 184 P. 375, *7 A. L. R. 339;*

Ex Parte Creasy, 243 Mo. 579, 148 S. W. 914, 41 L. R. A. (N. S.) 473;

Re Shull, 221 Mo. 623, 121 S. W. 10, 133 Am. St. Rep. 496;

Hoffman v. Hoffman, 26 S. D. 34, 127 N. W. 478, 30 L. R. A. (N. S.) 564;

Ann. Cas. 1913A, 956 (*dictum*);
Anno: 154 A. L. R. 1229.

9.51 *Anno:* 154 A. L. R. 1231:

"In this connection it should be noted that it has frequently been said that no intendments, or presumptions can, as in the case of an ordinary judgment, be indulged in by the appellate court in favor of upholding an adjudication of contempt."

Anno: 154 A. L. R. 1234;

See:

Re Shull, 221 Mo. 623, 121 S. W. 10, 133 Am. St. Rep. 496.

9.52 Anno: 154 A. L. R. 1236, 1237:

"In the proceedings for direct contempt, the order or judgment of contempt is * * * required to set forth the acts constituting the offense * * * and such recital is necessary to the validity of the judgment." (See cases cited under Notes 54 and 56).

(*Corpus Juris Secundum*, Vol. 17, Contempt, Par. 86, p. 124 (3)).

"A formal entry showing the facts constituting a contempt and the proceedings taken constitutes the full record."

(*State v. Rodrigues*, 219 La., p. 217, 52 So. (2d) 756).

See also:

Fleming v. U. S. (1922, C. C. A., 9th), 279 Fed. 613 (Cert. denied) 67 L. Ed. 496 43 S. C. T. 10, 260 U. S. 752.

In a proceeding to impose a penalty for direct contempt a summary inquiry and a record of the fine and punishment are necessary to constitute due process of law.

Fleming v. U. S., supra;
Savin (petitioner), 131 U. S. 267, 9 Sup. Ct. 699, 33 L. Ed. 150;
Brown v. U. S., 196 Fed. 351, 116 C. C. A. 171.

We attach to this application certified copies of the entire proceeding before the Supreme Court of Louisiana, that is, the application of petitioner for writs in the said Court and the documents considered therein, as well as the action of the Court thereon.

CONCLUSION.

For the reasons hereinabove set forth, it is respectfully submitted that this case is one which justifies the granting of a writ of certiorari and, finally, we respectfully submit, that after a full review herein, Your Honors should annul and set aside the illegal judgment and sentence imposed on petitioner, and petitioner respectfully prays for all further general and equitable relief.

Respectfully submitted,

EUGENE STANLEY,

Attorney for Petitioner,
819 Whitney Bldg.,
New Orleans, La.

APPENDIX "A"

1.

Extracts from minutes of Case No. 147-345, State of Louisiana vs. Louis G. Hill and Clifford A. Reuther, Sec. "F", Criminal District Court, Parish of Orleans, of date August 2, 1955, showing verbal judgment of Honorable Niels F. Hertz, trial Judge, finding Aaron M. Kohn guilty of contempt of Court (Record, page 22):

> "During the testimony of Mr. Kohn, Mr. Kohn refused to answer certain questions, the court then advised Mr. Kohn that he must answer the question or be held in contempt, Mr. Kohn then informed the court that he still would not answer the said question, whereupon, the court found Aaron Kohn to be guilty of contempt of court and deferred sentence to such time as the conclusion of testimony taken in this case, the court further informed Mr. Kohn that he might purge himself by the answering the said question, before the conclusion of taking of testimony in this case."

2.

Extract from minutes of lower Court of August 5, 1955 sentencing petitioner, Aaron M. Kohn for contempt of Court. (Record, p. 26):

> "The hour being 10:05 A. M. the court retired the jury, in order that the court might take up the matter of Aaron Kohn who was held in Contempt of Court. The court then called Aaron Kohn before the bar. Mr. Kohn was accompanied by his

counsel Wm. J. Guste, Esq. The court having found Aaron Kohn guilty of Contempt of Court on Tuesday, August 2, 1955 and having given the said Aaron Kohn until this day (technically, the close of taking of testimony in this case, State vs. Hill and Reuther), to purge himself of the contempt. The Court then asked Mr. Kohn whether or not, he would now answer the question previously propounded (by the defense) on August 2, 1955 and for which he the said Aaron Kohn was found Guilty of Contempt of Court for Failure to Answer the said question after being so ordered by the court. Aaron Kohn, then informed the court that he did not wish to Purge himself and Further Still refuses to answer the question. The Court then informed Mr. Kohn that it was going to sentence him for contempt of Court, whereupon, Aaron Kohn through his counsel Wm. J. Guste, Esq., informed the court of their intention to apply to the Louisiana State Supreme Court, for writs. The court then sentenced Aaron Kohn to pay a fine of $100 and to serve ten days in the parish prison, and to serve ten days additional in default of payment of the fine, Execution of said sentence to be suspended Until Friday August 12, 1955 at 10:20 A. M. Pending the application for Writs."

8.

Copy of decree of Louisiana Supreme Court denying application of Aaron M. Kohn, petitioner, for writs of certiorari, etc. (Record, page 70).

SUPREME COURT OF LOUISIANA
New Orleans

BY McCALEB, J.: September 30, 1955
State of Louisiana No. 42,610
v.
Aaron M. Kohn

In re: Aaron M. Kohn Applying for Writs of Certiorari, Mandamus and Prohibition.

Writs refused. We find no error in the ruling complained of.

/s/ EHMcC
/s/ ALP
/s/ JBH
/s/ FWH
/s/ HAM
/s/ JDS

A TRUE COPY
Clerk's Office, New Orleans
September 30, 1955

(Signed) Harold A. Moise, Jr.,
Deputy Clerk